CASE NO. 84-1252

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JOSEPH GUERIN

Petitioner,

vs

STATE OF FLORIDA

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE FOURTH DISTRICT
COURT OF APPEALS FOR THE
STATE OF FLORIDA

MAURICE GRAHAM P.A.
2161 E. Commercial Blvd.,
Ft. Lauderdale, Fla. 33308
(305) 776-7500

Attorney for Petitioner

QUESTIONS PRESENTED

The questions presented by this Petitioner for Writ of Certiorari to the Fourth District Court of Appeals for the State of Florida are:

(1) Is the broad authority of a U.S. Customs Officer to conduct border searches under 19 U.S.C. § 1581 (a) delegable to local law enforcement agencies acting merely on a message to look out for possible smugglers when said local officers are acting without the presence or ex- press direction of an officer of the U.S. Customs service?

(2) Is an initial stop and detention by police officers acting without probable cause a significant curtailment of liberty and, if so; is the continued detention of a citizen when said initial stop fails to produce probable cause unlawful under **Dunaway v New York**, thereby requiring suppression of evidence discovered as a direct result of said detention?

(3) Must the source and reliability of information upon which police officers base their probable cause to conduct a stop, detention and arrest be proven at a suppression hearing under **Whitley v Warden**?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED. i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW. 1

JURISDICTION 2

STATEMENT OF THE CASE. 4

REASONS FOR GRANTING WRIT. 7

1. The broad authority of a U.S. Customs officer to conduct searches under 19 U.S.C. 1581 (a) is not delegable to local officers acting without the presence of, or under the express direction of the U.S. Customs Service.

2. The initial stop and detention of Petitioner and continued detention without probable cause was unlawful and required the suppression of the fruits of the search that followed.

3. The trial judge erred in not requiring the state to prove the source and reliability of the information that they used to base their "probable cause" on in stopping Petitioner.

CONCLUSION 12

INDEX TO APPENDIX. . . . . A-i

TABLE OF AUTHORITIES

1. Alexander v United States,
362 F.2d 379 (9th Cir. 1966):

2. Dunaway v New York
442 U.S. 200 (1979)

3. Morejon v State
431 So.2d 315

4. Reid v. Georgia
448 U.S. 438 (1980)

5. Torres v. Commonwealth of Puerto Rico
442 U.S. 465 (1979)

6. Terry v. Ohio,
392 U.S. 1 (1968).

7. The Atlantic
68 F.2d 8 (2nd Cir. 1933).

8. United States v Glazion;
402 F.2d 8, 121 (2nd Cir. 1968).

9. United States v Soto-Soto
598 F.2d 545 (1979).

10. Whitley v Warden
401 U.S. 560, 567 (1971).

11. Wong Sun v United States
371 U.S. 471 (1963).

United States Constitution:
Amendment IV
Amendment X4

United States Supreme Court Rules:
Rule 17.

U.S.C.
Title 19 §§ 1581 (a)
Title 19 §§ 1581 (b)
Title 28 §§ 1257

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OPINIONS BELOW

The opinion and order of the Fourth District Court of Appeal for the State of Florida is appended to this Petition for Certiorari as Appendix A-1. The order of the Circuit Court for the 15th Judicial Circuit denying Petitioner's Motion to Supress is appended as Appendix A-2 and the sentence and judgment of said Court is appended as Appendix A-3. The order denying Petitioner's motion for bond is appended as Appendix A-4.

BEST AVAILABLE COPY

JURISDICTION

The judgment of the Circuit Court was entered on the 31st day of May, 1983. A timely appeal was filed to the Fourth District Court of Appeals and the Circuit Court's ruling was affirmed on the 7th day of November, 1984. The certiorari jurisdiction of this Court to review the decision of the Fourth District Court of Appeals is invoked pursuant to Title 28 U.S.C. SS 1257. An extension of time to file this Petition on or before February 5, 1985, was granted on January 10, 1985.

Constitutional Provisions and Applicable Rules.
United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment 14.

1. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor denty any person within its jurisdiction the equal protection of the laws.

United States Supreme Court, Rule 17.

2. A review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a federal court of appeals has rendered a decision in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has dicided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in conflict with applicable decisions of this Court.

3. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims or the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law or Writ of Certiorari.

STATEMENT OF THE CASE

On October 2, 1980 the Palm Beach County Sheriff's Department received information from U.S. Customs (which information was given to Customs by the Boca Raton Police Department) that a boat was seized carrying contraband and that a group of boats from 23 to 32 feet in length would be "coming across" from an "offload operation." The actual source or reliability of that information was never shown in court.

This information was relayed to Palm Beach County Sheriff's detective Meyers by a Sergeant from that department. Meyers, in turn, contacted the Harbor Patrol and advised them to place police vessels at all major inlets. Pursuant to these instructions, Deputy Sheriff Baker and Wildeman set their patrol boat about three-quarters of a mile east of the Palm Beach Inlet and proceeded to look for vessels of that size which "may have some indication that they were carrying marijuana . . . (or) smuggling contraband into the United States."

The deputies received no other information about these possible vessels. They testified that "the ocean (is) full of such boats," that "there were a number" . . . in "the waters around", and that the 31 foot Wellcraft Suncruiser which was later seized, is "not an uncommon type of boat at all."

From that position offshore using binoculars, the officers observed a "dot on the horizon" which became larger as the craft approached shore. Officer Baker related that he estimated that the boat was originally twelve to fifteen miles offshore.

As the boat approached, the officers noted that, "it had its outriggers out but it appeared to be moving too fast to be trolling. As it got closer still we could see it was pushing through the waves with a lot of power, pushing a lot of water, but it wasn't going very fast." There were three white males in the boat; the operator who was at helm, another individual (the Petitioner) was sitting on the seat at the transom and there was a third individual cleaning fish at the stern of the boat.

Apparently at this point, or earlier, Deputy Wildeman radioed Sergeant Meyers and asked if they could check out the boat before coming to pick up the Sergeant at Phil Foster, some four miles away. Meyers said yes. "When the boat was approximately a mile offshore . . ." Deputy Wildeman called to the operator of the boat and asked him to heave to once he got inside the inlet. At that time, the officers had "already formed an intent to stop that boat in order "to check the interior of the cabin for possible marijuana." The officers had seen no violations of the law.

After the officer's order was given to "heave to", they observed the Petitioner get up and lock the cabin door. The suspect boat proceeded into the inlet as ordered but then "strayed north of the Channel and came close to the rocks." As Deputy Wildeman ordered the boat away from the rocks, a Sheriffs' helicopter appeared overhead and the boat came back into the channel.

Deputy Baker boarded the boat and Deputy Wildeman stayed aboard the patrol boat. Baker advised the operator that he "was looking for smugglers," and asked consent to search the boat. Consent was refused. The Deputy then checked the registration, which was in order. Baker saw no residue or marijuana or any other violation of the law. He did smell a "strong odor," but he could not identify it. The Deputy felt he had no probable cause and as far as he was concerned, he was done with the petitioner and his co-defendants.

While this boarding was taking place, Sergeant Meyers called Customs and requested an agent meet him at Phil Foster Park. Meyers related that his reason for calling Customs was that Customs apparently had gotten the information about the "large scaled drop" from the Boca Raton Police and "they were more involved with Boca than we were at that particular time." But "whether they had come or not, we could have undoubtedly looked at the boat . . .".

Sergeant Meyers ordered the deputies to bring the boat to the Park. This message was relayed to Baker who in turn ordered the operator of the boat to proceed to the Park.

The boat was escorted to the Park by the patrol boat, the police helicopter and by Deputy Sheriff Warmack in another

boat. The Petitioner was not free to leave and was in the custody of the police.

After arriving at the Park, Agent Edmunds of U.S. Customs asked the occupants for their boater's registration and their safety equipment.

Sergeant Meyers then "observed residue around the cabin, underneath the driver's seat and all in front of the door." Both Meyers and Edmunds reported that they smelled marijuana. What happened next is well described by Sergeant Meyers:

> When I saw the residue, I pointed it out, and the Customs Agent and myself by that time, we had the boat up to the dock. We got off the boat completely and he asked me at that time if I was going to make an arrest right then on just the residue and I said yes, I was.
>
> I got back on the boat and placed the three subjects under arrest right then.

No information was ever relayed to either Sergeant Meyers or Agent Edmunds that the boat had come from international waters.

At the dock, Customs and the Sheriff's deputies searched the boat and found some 3,800 pounds of marijuana.

Sergeant Meyers then ordered Deputy Sildeman to "take the boat to Old Port Cove (the Harbor Patrol Station) and stay with it so as to secure the evidence until an evidence custodian could arrive. . ."

Petitioner was then charged by the State with Trafficking in Marijuana. Petitioner filed a Motion to Suppress the fruits of the seizure and search of the vessel. After denial of the Motion the Petitioner entered a plea of nolo contendre specifically reserving the right to appeal the denial of the Motion to Suppress. The State stipulated that the Petitioner had standing and that the motion, if granted, would have been dispositive of the case.

The trial court adjudicated the Petitioner guilty and sentenced him to three years incarceration. An appeal to the 4th District Court of Appeal followed which resulted in a "per curiam affirmed" decision thereby exhausting Petitioner's state remedies.

On January 8, 1985, the defendant surrendered to the trial court for Fulfillment of Sentence. On January 21, 1985, the 4th District Court of Appeal denied the defendant's bond motion. The defendant remains incarcerrated in the Florida State Prison.

REASONS FOR GRANTING THE WRIT

POINT 1

The broad authority of a U.S. Customs officer to conduct searches under 19 U.S.C. 1581(a) is not delegable to local officers acting without the presence of, or under the express direction of the U.S. Customs Service.

The statutory authority for border searches is found in Title 19 U.S.C. 1581 (a). Congress, in realizing the mischief which would result if this "unique power to stop a person at an internal entry point and to conduct a 'border search' without having a search warrant or even having a probable cause to believe the person has committed a crime" was extended to any police officer, limited the delegation of this power in Title 19 U.S.C. 1581 (b). **United States v Glazion,** 402 F.2d 8, 12 (2nd Cir. 1968). Only officers of the customs or officers of the Department of the Treasury and other persons **authorized by such department** have the authority to conduct border stops and seizures. In the case sub judice there was absolutely no testimony from anyone working in Customs that such authority was given.

Petitioner has not found a single authority which would give a person authority to act in the manner complained of here. In fact, any such delegation would clearly violate Article II, Section 2, Clause 2 of the United States Constitution which dictates that only Congress is empowered to vest the Appointment of such inferior officers as they think proper.

Law enforcement agencies which have claimed the right to make "border stops or searches", have been rebuffed by the courts. **United States v Soto-Soto**, 598 F.2d 545 (1979), rejected the government's contention that an FBI Agent could act in the furtherance of customs law. The Agent in **Soto-Soto** testified "that his sole purpose in conducting the search was not to enforce importation laws but rather to check whether the defendant's car was stolen. He acted for general law enforcement purposes, not for enforcement of customs laws; he never inquired whether the defendant had anything to declare." **Soto-Soto**, at 549.

In **Torres v Commonwealth of Puerto Rico**, 442 U.S. 465 (1979), this Court rejected a similar attempt by the government. There, the police conducted a border stop and search under the authority of a statute. While the Court recognized the pressing problems of law enforcement, it stressed; "we have not dispensed with the fundamental Fourth Amendment prohibition against unreasonable search and seizure simply because of a generalized urgency of law enforcement." **Torres** at 474.

In the case at bar, the deputies were "looking for smugglers". Yet, the validity of the "border search" exception, "is found in the fact that the primordial purpose of a search by Customs Officers is not to apprehend persons, but to seize contraband property unlawfully imported or brought into the United States." **Alexander v United States**, 362 F.2d 379 (9th Cir. 1966); See also **The Atlantic**, 68 F.2d 8 (2nd Cir. 1933). "The Congress has in effect declared that a search which would be unreasonable within the meaning of the Fourth Amendment, if conducted by police officers in the ordinary case, would be a reasonable search if conducted by Customs officials in lawful pursuit of unlawful imports." **Alexander** at 381.

These cases and others do not hold that a customs agent may not be rendered assistance. They simply hold that customs power is not delegable. Unless accompanied and directed by a customs agent or other similarly empowered official, a citizen, police officer or FBI agent may not adopt the "unique powers" of customs agents "on the mere basis that it occured

at the border. This asks too much." **Soto-Soto**, 598 F.2d at 549 (9th Cir. 1979); see also, 61 ALR Fed. 280 (1983).

POINT II

The initial stop and detention of Petitioner and continued detention without probable cause was unlawful and required the suppression of the fruits of the search that followed.

Petitioner contends that the initial stop and detention of him and the vessel by Deputy Sheriffs Baker and Wildeman was a "significant curtailment of his liberty", **Reid v Georgia**, 448 U.S. 438 (1980); and accordingly the Fourth and Fourteenth Amendments to the United States Constitution clearly apply.

In order for an officer to make a valid investigatory stop, it is required that the officer have a "founded or reasonable suspicion" of criminal activity which merits further investigation. **Terry v Ohio**, 392 U.S. 1 (1968). The facts of the instant case fall short of demonstrating that Deputy Sheriffs Baker and Wildeman had a "well founded suspicion" of criminal activity by the Petitioner sufficient to justify the stop of him and the vessel.

Prior to stopping the Petitioner, Baker and Wildeman had no actual knowledge that the Petitioner was engaging in any criminal activity. Instead, the officers merely had information to be on the lookout for boats on the 21 to 32 foot range (which must account for 90% of the vessels on the south Florida coast), which might be loaded with marijuana. Subsequently, Baker and Wildeman sighted the Petitioner's boat, a 31 foot Wellcraft. Because of the boat's size, and that it appeared to be riding low on the water, and had its outriggers down, Baker and Wildeman ordered the Petitioner to stop. These facts together, do not meet the standard of "reasonable suspicion of criminal activity."

The initial stop of the Petitioner was illegal, and all evidence seized from the boat must be suppressed as the "fruit of the poisonous tree." **Wong Sun v United States**, 371 U.S. 471 (1963).

Assuming arguendo that the initial stop and detention of the Petitioner is determined to have been lawful, the temporary detention exceeded its permissible scope.

After Deputy Sheriff Baker had ordered the Petitioner's boat to stop, observed no contraband in plain view, no other criminal law violation, and having examined the boat's registration papers and found them to be in order, the Deputies had an absolute duty to permit the Petitioner to continue on his way.

The order of Agent Meyers to Deputy Sheriffs Baker and Wildeman to bring the Petitioner and his boat to Phil Foster Park resulted in the "arrest" of the Petitioner and said arrest was unlawful as it was not based on probable cause.

In **Dunaway v New York**, 442 U.S. 200 (1979), the defendant had been picked up at his home by police officers and brought to police headquarters for questioning. He was not advised that he was under arrest, but there was evidence that had the defendant attempted to leave police headquarters, he would have been physically restrained. The State argued that the seizure of the defendant did not amount to an arrest and was therefore permissible under the Fourth Amendment because police had a "reasonable suspicion" that the defendant had knowledge about a serious and unsolved crime. This Court rejected the State's position, and held that regardless of the fact that the defendant was told that he was not under arrest, the seizure of the defendant violated the Fourth and Fourteenth Amendments when, without probable cause, the police seized the Petitioner and transported him to the police station.

Applying the above cited authority to the instant case, it is readily apparent at the time Agent Meyers ordered Deputy Sheriffs Baker and Wildeman to bring the Petitioner and his boat to Phil Foster Park, the Petitioner had been arrested. The fact he had not formally been advised he was under arrest is irrelevent, as noted by the above cited cases. In fact the trial court stated "I think the facts clearly reflected he was not free to leave."

Consequently, because the officers did not have probable cause to arrest the Petitioner, and order him to Phil Foster Park, his arrest was illegal, and the subsequent discovery of marijuana on the Petitioner's boat should have been suppressed.

POINT III

The trial judge erred in not requiring the state to prove the source and reliability of the information that they used to base their "probable cause" on in stopping Petitioner.

No testimony was given below as to where the information about an off-shore operation originally came. Since it is clear the police relied upon this information in making their stop, detention and arrest, such information and its reliability should have been proven below. Counsel for the Petitioner pointed out this ommission to the trial court and appellate court and cited the case of **Morejon v State**, 431 So2d 315 (3rd DCA 1983). In **Morejon**, because testimony was given by United States Customs officers as to where they received information which Monroe County Deputies relied upon for "probable cause", the order denying suppression was reversed.

In the case at bar, no evidence was produced as to how this information was received or passed on. The information may not have been accurate, and therefore could not be relied upon as aiding "probable cause" and a deficiency in initial probable cause cannot be rectified by the products of a search conducted after arrest. **Whitely v. Warden**, 401 U.S. 560, 567 (1971).

POINT OF INFORMATION

Throughout the proceedings below, the Petitioner's name has been misspelled (Guern). This petition employs the correct spelling.

CONCLUSION

Wherefore, in light of the foregoing arguments, circumstances and authorities therein cited, the Petitioner respectfully requests that this Court issue a Writ of Certiorari to the Fourth District Court of Appeals for the State of Florida.

Respectfully submitted,

Maurice Graham Esq.,
Attorney for Petitioner
Assisted On the Brief by
Frederick A. Cary and
Clyde S. Munsell

I HEREBY CERTIFY that a true copy of the Petition for Writ of Certiorari was furnished to the Office of the Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, this 5th day of February, 1985.

BY: _____

Maurice Graham P.A.
2161 E. Commercial Blvd.,
Ft. Lauderdale, Fla. 33308
(305) 776-7500

INDEX TO APPENDIX

1. Decision of the Fourth District Court of Appeals for the State of Florida A-1

2. Order on Motion to Suppress A-2

3. Judgement and sentence of the 15th Judicial Circuit State of Florida A-3

4. Order denying bond. A-4

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1984

JOSEPH GUERN,	)	NOT FINAL UNTIL
	)	TIME EXPIRES TO FILE
Appellant,	)	REHEARING PETITION
	)	AND, IF FILED,
v	)	DISPOSED OF.
	)	
	)	CASE NO. 83-1145
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	

Decision filed November 7, 1984.

Appeal from the Circuit Court
for Palm Beach County;
Marvin U. Mounts, Jr., Judge.

Maurice Graham of Maurice Graham
P.A., Fort Lauderdale, for appellant.

Jim Smith, Attorney General,
Tallahassee, and Russell S. Bohn,
Assistant Attorney General,
West Palm Beach, for appellee.

PER CURIAM.

AFFIRMED.

HERSEY and WALDEN, JJ., and FLEET, J. LEONARD,
Associate Judge, concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR PALM BEACH COUNTY

CRIMINAL DIVISION

STATE OF FLORIDA	)	
	)	
vs.	)	CASE NO. 80-5548 CF
	)	
JEFFREY J. FRANKLIN,	)	
	)	
Defendant.	)	
	)	

ORDER

This matter was before the Court on the Defendant's Motion to Suppress February 2nd, 1982; Attorney Douglas Duncan represented the Defendant and Assistant State Attorney Jerome Davis represented the State. Both sides have filed memorandums in conjunction with the case.

On the date that this thirty-one foot Wellcraft vessel was stopped, United States Customs had informed the Sheriff's Organized Crime Bureau that they believed a mother ship had off-loaded marijuana to small vessels and that these vessels were heading toward the United States. Local and State officials were advised to be on the lookout for vessels coming from the high seas within the 26 foot to 32 foot range. Agent Myers of the Sheriff's Office was called back to duty and proceeded to the area of the Palm Beach Inlet where he established radio communication with two Sheriff's Harbor Patrolmen, Glenn Baker and John Wildman. Baker and Wildman were outside of the Inlet east of Palm Beach three-quarters to a mile at sea. They observed by means of binoculars a small white spot on the horizon which they estimated to be some twelve to fifteen miles away. When the vessel drew closer to

the United States coastline, it appeared to them to be heavily laden, to be driving through the waves rather than planeing and riding on the surface, to have its outriggers down and out in the trolling position (although the vessel was moving too fast for trolling) and it appeared that the vessel's engines were running very close to maximum, putting out a sizeable wake.

The deputies approached the vessel occupied by the defendant and his two companions in their clearly marked Sheriff's Patrol Boat. The boat veered away from the channel within the Inlet and almost went on the rocks that anchor the jetty. A Sheriff's helicopter approached and the deputies commanded the vessel to get away from the rocks and back into the channel.

The officers also had observed that the occupants padlocked the entrance to the cabin. Officer Baker boarded the vessel and asked for permission to look in the cabin. They informed him that it was padlocked and either that it could not be opened or it would not be opened. The deputy was under the impression that they could not open the cabin and he regarded this as an extremely suspicious circumstance because ordinarily vessels will not go out to sea unless there is access to the cabin where radios and other safety devices are usually stored. The occupants then asked the deputy to leave and he complied.

At about the same time Myers had been receiving radio communications concerning the vessel and had communicated with the United States Customs officers who advised him that they would meet the Sheriff's officers at Phil Foster Park located very close to the Palm Beach Inlet. Myers relayed these instructions to the officers in the patrol boat who directed the defendants to go to Phil Foster Park.

The defendants were experiencing some type of navigational problems. When they were in the vicinity of Phil Foster Park, Officer Myers and United States Customs Officer Edmunds boarded their vessel. Both Meyers and Edmunds noticed the sluggish operation of the vessel and marijuana residue in the vicinity of the entranceway to the locked cabin.

Officer Edmunds lifted the hatch off the engine compartment and observed bales of marijuana surrounding the engine area.

I find that the testimony reflects that the Harbor Patrol Officers had seen this vessel enter coastal waters from the high seas to the east and certainly beyond the coastal athree-mile limit. I find that the Harbor Patrol Officers stopped the vessel but made no search of it after being denied access to the cabin. The only thing that the officer required of the occupants of the boat was a production of its registration for his inspection and in order to record the information contained thereon.

I also find that the officers of the Sheriff's Office viewed their action as being in the assistance of and furtherance of the United States Customs interest in marijuana transportation by small boats from the Bahamas to the United States. It matters not that Customs Officer Edmunds had no knowledge that this particular vessel had come from the high seas. It was, in fact, the case as viewed by the Agents of the Sheriff's Office who were in effect the agents of Customs in this particular respect.

Both Officers Edmunds and Myers felt that they had sufficient probable cause based on all of the foregoing facts (but excluding the knowledge that the vessel had come from the high seas) and they felt that the observation of marijuana residue and the odor of marijuana when they got onto the vessel justified them in their actions apart from any Customs border search/silver platter doctrine principle.

The defendant makes a strong argument that the stopping of the vessels in coastal waters is similar to stopping of an automobile on land to check the driver's license. He relies, for example on Florida Statute 001.151. While his argument is skillful and cites many authorities for land based stops, it seems to me that Florida Statute 901.151 must be viewed in a slightly different perspective when the activity occurs on sea or on water. It is not the same thing.

I find here that there was a showing of a recent border crossing and, additionally, the incidence of vessels coming from the high seas is all together different than the incidence of automobiles motoring on the State's highways. See Morales v. State, 3rd Dist. Case Nos. 80-248; 80-249, December 15th, 1981. (Fla. Law Weekly 1/8/82).

The Motion to Suppress is denied.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 25th day of February, 1982.

SEAL

/s/ MARVIN MOUNTS, JR., Circuit Judge

copies furnished counsel

CERTIFIED
TO BE A TRUE COPY
JOHN B. DUNKLE, CLERK
BY

D.C.

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CASE NUMBER 80-5548 CFC02
JOSEPH EUGENE GUERN
DEFENDANT

JUDGMENT

The Defendant, ABOVE, being personally before a Court represented by MAURICE GRAHAM, ESQ., his attorney of record, and having entered a plea of nolo contenders to the following crime;

COUNT 1 CRIME: POSSESSION OF MARIJUANA. OVER 100 POUNDS BUT LESS THAN 2,000 POUNDS

(Non-applicable matter omitted.)

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant hereby ADJUDICATED GUILTY of the above crime(s).

.....

The Defendant is hereby ordered to pay the sum of ten dollars ($10.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars ($2.00) as a court cost pursuant to F.S. 943.25 (4D).

(Non-applicable matter omitted.)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

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DONE AND ORDERED in Open Court, this 31st day of MAY, 1983 at West Palm Beach, Palm Beach County, Florida.

S/S Judge, Circuit Court Marvin Mounts, Jr.

DEFENDANT'S FINGERPRINTS OMITTED

Fingerprints taken by ROBERTA ROBERTSON, D/S

DONE AND ORDERED in Open Court at PALM BEACH County, Florida, this date, May 31, 1983. I HEREBY CERTIFY the above and foregoing fingerprints are the fingerprints of the Defendant, JOSEPH EUGENE GUERN and they were placed thereon by said Defendant in my presence in Open Court this date.

SENTENCE

(As to Count ONE)

The Defendant, being personally before this Court, accompanied by his attorney, Maurice Graham, Esq., and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

- ☑ The Defendant is hereby committed to the custody of the Department of Corrections.
- ☐ The Defendant is hereby committed to the custody of the Sheriff of PALM BEACH County, Florida
  Name of local corrections authority to be inserted at printing, if other than Sheriff).

To be imprisioned for a term of 3 years.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Drug Trafficking mandatory minimun	It is further ordered that the 3 year minimum provisions of F.S. 893.135(1) are hereby imposed for the sentence specified in this count.
Jail Credit	It is further ordered that the Defendant shall be allowed a total ..... credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional): 10-2-80 to 10-3-80 & 7-16-82 to 8-16-82.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentance by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in Open Court at Palm Beach County, Florida, this 31st day of May A.D., 1983.

Insert PAGE 1478

S Marvin Mounts, Jr.

IN THE DISTRICT COURT OF APPEAL OF THE STATE
OF FLORIDA
FOURTH DISTRICT

JOSEPH GUERN

Appellant,

CASE NO. 83-1145

v.

STATE OF FLORIDA

Appellee.

January 21, 1985

BY ORDER OF THE COURT:

ORDERED that Appellant's January 11, 1985
Motion to review denial of motion
to stay is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

§ CLYDE L. HEATH,
CLERK

CC: Maurice Graham, Esq.
Robert S. Jaegers, Assistant
Attorney General

cms